



Ohio Revised Code

Section 5126.23 Discipline of management employee or superintendent.

Effective: October 6, 2009

Legislation: Senate Bill 79 - 128th General Assembly

(A) As used in this section, "employee" means a management employee or superintendent of a county board of developmental disabilities.

(B) An employee may be removed, suspended, or demoted in accordance with this section for violation of written rules set forth by the board or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or other acts of misfeasance, malfeasance, or nonfeasance.

(C) Prior to the removal, suspension, or demotion of an employee pursuant to this section, the employee shall be notified in writing of the charges against the employee. Except as otherwise provided in division (H) of this section, not later than thirty days after receiving such notification, a predisciplinary conference shall be held to provide the employee an opportunity to refute the charges against the employee. At least seventy-two hours prior to the conference, the employee shall be given a copy of the charges against the employee.

If the removal, suspension, or demotion action is directed against a management employee, the conference shall be held by the superintendent or a person the superintendent designates, and the superintendent shall notify the management employee within fifteen days after the conference of the decision made with respect to the charges. If the removal, suspension, or demotion action is directed against a superintendent, the conference shall be held by the members of the board or their designees, and the board shall notify the superintendent within fifteen days after the conference of its decision with respect to the charges.

(D) Within fifteen days after receiving notification of the results of the predisciplinary conference, an employee may file with the board a written demand for a hearing before the board or before a referee, and the board shall set a time for the hearing which shall be within thirty days from the date of receipt of the written demand, and the board shall give the employee at least twenty days notice in writing of the time and place of the hearing.



(E) If a referee is demanded by an employee or a county board, the hearing shall be conducted by a referee selected in accordance with division (F) of this section; otherwise, it shall be conducted by a majority of the members of the board and shall be confined to the charges enumerated at the predisciplinary conference.

(F) Referees for the hearings required by this section shall be selected from the list of names compiled by the superintendent of public instruction pursuant to section 3319.161 of the Revised Code. Upon receipt of notice that a referee has been demanded by an employee or a county board, the superintendent of public instruction shall immediately designate three persons from such list, from whom the referee for the hearing shall be chosen, and the superintendent of public instruction shall immediately notify the designees, the county board, and the employee. If within five days of receipt of the notice, the county board and employee are unable to agree upon one of the designees to serve as referee, the superintendent of public instruction shall appoint one of the designees to serve as referee. The appointment of the referee shall be entered in the minutes of the county board. The referee appointed shall be paid the referee's usual and customary fee for attending the hearing which shall be paid from the general fund of the county board of developmental disabilities.

(G) The board shall provide for a complete stenographic record of the proceedings, and a copy of the record shall be furnished to the employee.

Both parties may be present at the hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the county board. If any person fails to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt. Any member of the board or the referee may administer oaths to witnesses. After a hearing by a referee, the referee shall file a report within ten days after the termination of the hearing. After consideration of the referee's report, the board, by a majority vote, may accept or reject the referee's recommendation. After a hearing by the board, the board, by majority vote, may enter its determination upon its minutes. If the decision, after hearing, is in favor of the employee, the charges and the record of the hearing shall be physically



expunged from the minutes and, if the employee has suffered any loss of salary by reason of being suspended, the employee shall be paid the employee's full salary for the period of such suspension.

Any employee affected by a determination of the board under this division may appeal to the court of common pleas of the county in which the board is located within thirty days after receipt of notice of the entry of such determination. The appeal shall be an original action in the court and shall be commenced by the filing of a complaint against the board, in which complaint the facts shall be alleged upon which the employee relies for a reversal or modification of such determination. Upon service or waiver of summons in that appeal, the board immediately shall transmit to the clerk of the court for filing a transcript of the original papers filed with the board, a certified copy of the minutes of the board into which the determination was entered, and a certified transcript of all evidence adduced at the hearing or hearings before the board or a certified transcript of all evidence adduced at the hearing or hearings before the referee, whereupon the cause shall be at issue without further pleading and shall be advanced and heard without delay. The court shall examine the transcript and record of the hearing and shall hold such additional hearings as it considers advisable, at which it may consider other evidence in addition to the transcript and record.

Upon final hearing, the court shall grant or deny the relief prayed for in the complaint as may be proper in accordance with the evidence adduced in the hearing. Such an action is a special proceeding, and either the employee or the board may appeal from the decision of the court of common pleas pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(H) Notwithstanding divisions (C) to (G) of this section, a county board and an employee may agree to submit issues regarding the employee's removal, suspension, or demotion to binding arbitration. The terms of the submission, including the method of selecting the arbitrator or arbitrators and the responsibility for compensating the arbitrator, shall be provided for in the arbitration agreement. The arbitrator shall be selected within fifteen days of the execution of the agreement. Chapter 2711. of the Revised Code governs the arbitration proceedings.